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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,501	12/22/2003	Joo H. Song	112703-316	7778

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EXAMINER
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CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/143,501

Applicant(s)

SONG ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 1-12-04
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 011604
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 9-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naumann (EP 0,273,809, page 5-9, 16 and 17 of translation) in view of Yang (5,110,607, col. 7, lines 26-40) or Reggio et al( 4,379,169, col. 4, lines 64-68).

Naumann disclose a continuous process of preparing chewing gum base and chewing gum in a single mixing apparatus including mixing an elastomer and filler (dispersive mixing) to form a fragment premix thereof. The fragment premix is fed to a first mixing zone while a plasticizer is fed to a second mixing zone, and flavoring is fed to a third mixing zone within a single extruder. Gum base and subsequently chewing gum are thus prepared (distributive mixing).

It would have been obvious to add the elastomer separately to the mixing apparatus in the process of Naumann without first forming a premix thereof with a filler since it is well known to separately add an elastomer to a chewing gum mixing apparatus without first mixing the elastomer with another component, as evidenced by either secondary reference. The use of a blade-and-pin mixer in an extruder to prepare gum base and chewing gum (claims 6 and 17) is conventional.

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3. Claims 7, 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naumann in view of Yang or Reggio et al as applied to claims 1-6, 9-17, 19 and 20 above, and further in view of Boudy.

It would have been obvious to use a counter – rotating intermeshing twin screw extruder as the extruder employed in the process of Naumann, as above modified, since it is old to use this type of extruder to prepare chewing gum base, as evidenced by Boudy (pages 5 and 6).

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-20 are also rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,562,936. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is conventional to use a single extruder to produce chewing gum base, and it is conventional to use chewing gum base to prepare chewing gum.

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6. Claims 1-20 are further rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 5,543,160. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is conventional to use a single extruder to produce chewing gum base.

7. Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,238,710. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to use the chewing gum base prepared in the process claimed in 6,238,710 to produce chewing gum since gum base is a conventional chewing gum component.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday - Friday from 10:30 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Corbin/af  
August 12, 2004



ARTHUR L. CORBIN  
PRIMARY EXAMINER  
8-12-04